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June 25, 2012

VIA ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
New York, NY 11201

Re: United States v. Thomas Gioeli, *et al.*
Case No. 08-cr-240 (S6) (BMC) (RER)

Dear Judge Cogan:

I am counsel, along with Carl J. Herman, Esq., for defendant Thomas Gioeli in connection with the above matter. I am writing to address the government's *ex parte* sealed documents submitted to the Court in anticipation of Gioeli's June 25, 2012 bail hearing.

At the hearing the Court addressed the novel effort by the government to submit a letter *ex parte* under seal without even knowing its contents. This procedure is wholly inappropriate. Without knowing what is stated in the letter, the government is unable to bear the burden required for placing the document under seal. *See United States v. Aref*, 533 F.3d 72 (2d Cir. 2008). The alternative offered by the government, for the Court to return the letter without disclosing its contents, is also not appropriate. As noted by the Court, the letter was not relevant to the bail application but may bear on sentencing. As such, Gioeli should be given the opportunity to inspect and respond to the letter.

The Honorable Brian M. Cogan

June 25, 2012

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Please do not hesitate to contact me if you have any questions or need any additional information in connection with the foregoing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam D. Perlmutter", with a stylized, sweeping flourish extending from the end of the name.

Adam D. Perlmutter

Cc: Thomas Gioeli (via regular mail)
All counsel (via ECF)